



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Ferguson-Williams, Inc.; Hawk Management  
Services, Inc.  
**File:** B-232334; B-232334.2  
**Date:** December 28, 1988

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### **DIGEST**

1. Contracting agency properly awarded negotiated contract on the basis of initial proposals, where the solicitation informed offerors of that possibility and the competition was adequate to obtain the lowest overall cost to the government at a fair and reasonable price.
2. Agency determination that incumbent contractor's low proposed cost is realistic and reasonable, based upon certain factors related to incumbent's status, has not been shown to be unreasonable, even though the record does not provide full explanations or rationalizations why the low cost is so much less than the other offerors' proposed costs.
3. Technically equal proposals may be evaluated as having very different realistic costs.
4. Where an agency reasonably finds that a slightly higher technical point score in the evaluation does not represent actual technical superiority, the agency may determine the proposals are essentially equal, such as to allow the agency to make award on the basis of cost.

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### **DECISION**

Ferguson-Williams, Inc. (F-W), and Hawk Management Services, Inc., protest the award of a contract<sup>1/</sup> by the Army Corps of Engineers, Vicksburg District, to R&D Maintenance

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<sup>1/</sup> Although the initial protests were filed prior to award, the Army subsequently determined that urgent and compelling circumstances significantly affecting the government's interests required that it proceed with the award, as authorized by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(c)(2) (Supp. IV 1986).

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Services, Inc., under request for proposals (RFP) No. DACW38-88-R-0038. The RFP was issued as a total small business set-aside for a cost-plus-award-fee contract for the operation and maintenance of the Yazoo Basin Headquarters Project and Facilities for 1 year with yearly options to extend the contract for 4 additional years.

We deny the protests.

F-W and Hawk protest that the agency's proposed award of the contract prior to conducting discussions and requesting best and final offers (BAFO) was inconsistent with the RFP. After the agency filed its report on the protests, F-W and Hawk also protested, on the basis of information they derived from that report, that R&D's proposed costs are unrealistically low, such as to be tantamount to an attempt to "buy-in" to the contract, and that the agency did not perform an adequate cost/price analysis of R&D's cost proposal.<sup>2/</sup>

The RFP required that proposals be submitted in three volumes (parts): (1) a technical proposal; (2) a management proposal; and (3) a cost/price proposal. Under the stated two-phase evaluation scheme, the technical and management proposals, which are weighted equally, were to be evaluated and point scored against stated evaluation criteria without reference to cost. Cost proposals were to be evaluated by cost/price analysis for completeness, reasonableness--that is, whether the proposal is supported by the offeror's technical and management approach--and realism, the extent to which proposed costs are comparable to the government's estimate.

In the first phase of the evaluation process, the RFP stated that responsive offerors' technical and management proposals would be evaluated and assigned points based upon the stated evaluation criteria, and the competitive range would be established based on the ranking of those proposals. In the second phase, offerors in the competitive range would be requested to submit BAFOs, which would be reevaluated and

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<sup>2/</sup> Hawk also protests that experience, a factor designated in the RFP in the evaluation of management proposals, was discriminatory to new businesses. This protest basis, first raised in response to the agency report on the protests, concerns an alleged solicitation defect. Since Hawk did not protest this matter prior to the closing date for receipt of proposals, this protest basis is untimely under our Bid Protest Regulations and is dismissed. 4 C.F.R. § 21.2(a)(1) (1988).

ranked according to assigned point scores. The RFP also said that in the second phase, ". . . negotiations may be conducted with all offerors in the competitive range and revised proposals requested from those offerors." (Emphasis supplied.) Also, Clause L-10 (Contract Award) and the "Information to Offerors or Quoters," of the RFP advised that initial offers should contain the offeror's best technical and price terms since award may be made without discussions on the basis of initial offers. Award was to be made:

" . . . to the highest evaluated offeror whose offer . . . is within a competitive range as determined by the Contracting Officer, and has been evaluated as most advantageous to the Government considering all factors including technical, management and cost . . . . If an offeror submits a proposal which is, in the Contracting Officer's opinion, clearly and substantially more advantageous to the Government than any other proposal, an award may be made on the initial offer without further negotiation."

Here, four proposals were received. The agency evaluated and ranked the top three technical and management proposals on a 50 point scale as follows:

Offeror	Technical Score	Management Score	Total Technical Proposal
F-W	45	48	93
R&D3/	44	45	89
Hawk	41	42	83

Cost proposals were then evaluated. The proposed estimated costs of the top three offerors were as follows:

Offeror	Total Estimated Costs Base Year	Total Estimated Costs (Base Year plus 4 1-Year options)
R&D	\$1,081,244.94	\$5,428,763.25
F-W	\$1,454,026.00	\$6,871,310.00
Hawk	\$1,529,047.15	\$7,471,640.59

The agency found each offeror's proposed cost was reasonable for its proposed approach. The agency also found R&D's cost, the first year of which was \$228,175 less than the

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3/ R&D is the incumbent contractor for this work.

\$1,309,400 government estimate for that year, was fair and reasonable and that R&D's cost was realistic, given the fact that it was the incumbent contractor.

The contracting officer also determined that the technical/management proposals of F-W and R&D, with a total score differential of only 4 points, were essentially technically equal, and that the initial technical and management proposals were of sufficient quality that negotiations were not necessary. Since R&D and F-W were rated essentially technically equal, and R&D was evaluated as having the lowest cost, award was made to R&D, without discussions, because the agency considered its proposal the most advantageous to the government.

F-W first contends that the Army improperly failed to complete the second phase of the evaluation process set forth in the RFP--that is, to allow the submission of BAFOs following the initial evaluation--and that cost could not be considered until the second phase.

We believe F-W has misconstrued the evaluation scheme, since, under the RFP, the agency could consider cost without first conducting discussions under proper circumstances. Indeed, cost must always be considered in making a competitive range determination to eliminate offerors from the competition before conducting discussions and soliciting BAFOs. Federal Acquisition Regulation (FAR) § 15.609(a) (FAC 84-16); Howard Finley Corp., B-226984, June 30, 1987, 66 Comp. Gen. \_\_\_, 87-2 CPD ¶ 4.

Moreover, we have held that a contracting officer may make an award without conducting discussions or requesting BAFOs, provided that the solicitation advises offerors of this possibility and there has been competition adequate to demonstrate that the award will result in the lowest overall cost to the government at a fair and reasonable price.

10 U.S.C. § 2305 (b)(4)(A)(ii) (Supp IV 1986); FAR § 15.610(a) (FAC 84-5); Economic Consulting Services, Inc., B-229895, Apr. 8, 1988, 88-1 CPD ¶ 351. In this case, not only did the RFP unambiguously provide the required notice, the agency received four proposals and selected the low cost offeror.<sup>4/</sup> Under the circumstances, the agency satisfied the requirement for competition adequate to result in the

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<sup>4/</sup> As discussed below, the agency's determination that R&D's cost was low has not been shown to be unreasonable.

lowest overall cost to the government. See Economic Consulting Services, B-229895, supra. Accordingly, we conclude it was not improper for the agency to make award without conducting discussions and requesting BAFOs.

Hawk acknowledges that under applicable statutory authority, the agency may award a contract without conducting discussions with the offerors, but maintains that in light of alleged informational deficiencies in the RFP, an award based on initial proposals was not appropriate because it was not clear that such an award would result in the lowest cost to the government. In this regard, Hawk states that at a pre-proposal conference Hawk raised a number of questions concerning matters which, in its view, the solicitation did not make clear. Hawk states that because the agency did not provide adequate responses to its questions by the closing date for receipt of proposals, the agency had a duty to allow discussions after proposals were submitted to clarify further those "solicitation uncertainties," so that all offerors could compete on an equal basis.

The fact that an offeror believes that an RFP is ambiguous does not require discussions be conducted. Any questions or objections which Hawk may have had concerning the solicitation were required to be resolved, or failing resolution, protested to either the contracting agency or our Office prior to the closing date for receipt of proposals. See A & H Automotive Industries, Inc., B-225775, May 28, 1987, 87-1 CPD ¶ 546. Consequently, this contention has no merit.

F-W and Hawk contend that R&D's cost proposal was "flagrantly unrealistic" because it was significantly lower than those proposed by the other offerors and because R&D proposed to perform the contract at a lower price than its total estimated prices for the requirement during the prior 3 years, even though under the subject RFP the scope of work and the required Service Contract Act wage determination have been increased. The protesters allege that the Army's acceptance of R&D's cost proposal was improper because it was not within the competitive range, since it represented an attempted buy-in to the contract.

The award of cost reimbursement type contracts requires that procurement officials make informed judgments as to the extent to which the offerors' proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. Ecology and Environment, Inc., B-209516, Aug. 23, 1983, 83-2 CPD ¶ 229 at 8. Such informed judgments are properly within the administrative discretion of the procuring agency, and its judgment is entitled to great

weight since it is in the best position to assess the realism of the proposed costs and must bear the major repercussions of any difficulties or expenses that may result from a defective analysis. PRC Computer Center, Inc., et al., 55 Comp. Gen. 60 at 78 (1975), 75-2 CPD ¶ 35. Our review of the agency's cost realism analysis is, therefore, limited to a determination of whether the agency's cost evaluation was reasonable and not arbitrary. Research Analysis & Management Corp., B-229057, Nov. 25, 1987, 87-2 CPD ¶ 523; Hager, Sharp & Abramson, Inc., B-201368, May 8, 1981, 81-1 CPD ¶ 365. In conducting a cost realism analysis of competing proposals, an agency is not necessarily required to conduct an in-depth analysis or to verify each item, but rather, to exercise informed judgments as to whether cost proposals are realistic in light of the contract requirements and proposed technical approaches. PTI Environmental Services, B-230070, May 27, 1988, 88-1 CPD ¶ 504; PRC Computer Center, Inc., et al., 55 Comp. Gen. supra at 78.

The record shows that the agency was not particularly concerned about the \$228,175 disparity between R&D's proposal and the government estimate for the first year of the contract, since the government estimate was "for control purposes only." Nevertheless, according to the agency report, the agency recently discovered that it erroneously included in the government estimate a \$200,000 direct material allowance, since those materials were to be supplied by the government. Thus, the disparity between the government estimate and R&D's price proposal was only \$28,175 for the first year.

The record also confirms the protesters' contention that R&D's first year costs plus fees of \$1,167,723 are less than the amount paid R&D for the last year of its prior contract for this work, but not to the extent claimed by the protesters. The protesters state that the price of the last year of the prior fixed price-plus-incentive fee contract was \$1,445,023. However, both the agency and R&D point out that this figure was only that amount committed to that contract and it included \$64,566 for work covered by one time contract modifications. Moreover, R&D reports that it was paid only \$1,305,938 for this prior contract work and the rest of the committed costs were for direct materials.<sup>5/</sup>

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<sup>5/</sup> As indicated above, direct materials are not part of the RFP's evaluated cost. The agency has informally confirmed that the \$1,445,023 figure for the last year of the prior contract included direct material costs.

Consequently, the price figure for the last year of the prior contract that should be used to compare with this RFP cost is \$1,241,373 (\$1,305,938 minus \$64,566).

The agency does not account for or rationalize why R&D's first year cost plus fees are less (\$73,650) than the prior yearly contract price. However, R&D states that it is purchasing the equipment for this RFP and will depreciate costs of the equipment over a five year period, while under the prior contract this equipment had been leased at significantly higher costs. The record confirms that R&D did lease the equipment under the prior contract; that it is supplying purchased equipment under this RFP; and that its equipment costs under this RFP are significantly lower than the other offerors' equipment costs. Moreover, although the protesters allege that this RFP includes significantly more work than the prior contract, which should require R&D to propose a higher cost, the agency convincingly responds that the changed work is relatively insignificant. Consequently, R&D's higher prior contract price does not indicate the agency cost realism analysis is unreasonable.

The record also indicates that the agency did review the costs of the top three offerors and determined that each was reasonable and in line with its proposed approach. The evaluation team and the contracting officer recognized that R&D's proposed estimated cost was appreciably lower than those of the other offerors, but they identified several factors, which are related to the fact that R&D is the incumbent contractor for this work, that may have contributed to or accounted for R&D's significantly lower proposed costs. Those factors include (1) mobilization costs, (2) equipment depreciation, and (3) experience.

The agency observes that since mobilization cost is not a separate line item in the RFP (nor is either of the other considered factors), cost proposals would not have specifically identified this item; however, it is a cost that would reasonably be incurred--and, therefore, included in cost proposals--though not to the same extent by the incumbent contractor since it is already on the work site. The evaluators also considered (and our in camera review of the proposal confirms) that R&D proposed to use some previously depreciated equipment at 40 percent of the normal depreciation.<sup>6/</sup> The evaluators state that they also considered the probability that R&D's costs were lower, due to its

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6/ Although the protesters allege R&D only leased equipment in its prior contract, our review of R&D's cost proposal confirms that it is proposing equipment that it owns.

familiarity and experience on the job site, which would eliminate any cost contingency for "start-up efficiency." The agency acknowledges that it could not quantify the amount of potential cost savings as a result of these considered factors, but states that, in the opinion of the evaluation team, the cost differences between R&D and the other offerors were accounted for by these factors.

Clearly, R&D's lower costs can be explained to some extent by the factors cited by the agency. However, the record does not contain a detailed explanation of why R&D's proposed costs are so much less than the other offerors. (R&D's cost is \$1,442,547 less than F-W's second low proposed cost for the 5-year RFP period.) Nevertheless, we find the factors identified above by the agency do provide reasonable certainty that R&D would still have the lowest cost. Consequently, the protesters have not shown that the contracting official's cost realism determinations were unreasonable or that R&D's cost constituted a "buy-in." See PRC Computer Center, Inc., et al., 55 Comp. Gen. 60, supra at 78-79, 75-2 CPD ¶ 35 at 22; Zeiders Enterprises, Inc., B-230261, June 20, 1988, 88-1 CPD ¶ 583.

The protesters speculate that R&D's labor rates violate the Service Contract Act wage determination. The agency states that its review indicated that R&D's rates for each labor discipline appears to be within the required wage determination. Based on our in camera review, we, too, have found no instances where R&D's proposed rates did not conform to the wage determination.

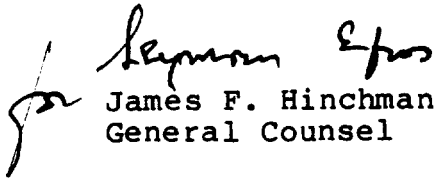
F-W challenges the agency determination that R&D's proposal is technically equal to F-W's proposal, in view of R&D's substantially lower costs. However, we have recognized that technically equal proposals may be evaluated as having very different realistic costs. CACI, Inc.--Federal, 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542.

F-W also states that since the RFP provided for point scoring of proposals and not adjectival ratings, the agency could not reasonably determine that its technical proposal, which received 93 points, was not technically superior to R&D's proposal, which received 89 points. However, point scores are only useful as guidelines for intelligent



decision-making in the procurement process. PRC Kentron, Inc., B-230212, June 7, 1988, 88-1 CPD ¶ 537. Where, as here, the agency reasonably finds that a slightly higher point score does not represent actual technical superiority, the agency may determine the proposals are essentially technically equal, such as to allow the agency to make award on the basis of cost. M. Rosenblatt & Sons, B-230026; B-230026.3, Apr. 26, 1988, 88-1 CPD ¶ 409; PRC Kentron, Inc., B-230212, supra. Here, since F-W has not otherwise challenged the agency's determination of technical equality, we find the award selection on the basis of R&D's low cost was reasonable.

The protests are denied.

  
James F. Hinchman  
General Counsel